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NO. 07-875

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In The

SUPREME COURT OF THE UNITED STATES

November term, 2007

KIRK AND SUSAN WHITCOMBE
Husband and wife
Petitioners'

v.

LARRY AND SUSAN HENAK
Husband and wife
Respondent's

On a Writ of Certiorari to the United States Court of Appeals for the for the United States Court of Appeals for the Ninth Circuit

PETITION FOR REHEARING

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(Board of Trustees of Local 25 v. Madison Hotel, Inc., 97 F. 3d 1479, 1489 & n. 17 (D.C. Cir. 1996) (Rule 60(b) motion at issue) (citing Erwin Chemerinski, *Federal Jurisdiction*, 172, 196-200 (2d ed. 1994) 8

Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978) (quoted in BMW at 517 U.S. at 573 n.19) see 9

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PETITION FOR REHEARING

Pursuant to Rule 44.2 petitioners petition this court for rehearing. (Writ of Certiorari was summarily denied February 19, 2008.

U.S FIRST AND FIFTH AMENDMENT RIGHTS REQUIRES COURT OF APPEALS EXPLANATION OF THE REASONS WHY IT AFFIRMS A FEDERAL DISTRICT COURTS DISMISSAL.

The US Court of Appeals for the Ninth Circuit July 16, 2007 Memorandum, Ex. A-11[1] does not afford Whitcombe's their U.S. First Amendment Rights to petition to government for redress of grievances, without fear of retaliation for the same, nor their U.S. Constitutional Fifth Amendment Due Process and Equal Protection of the Law guarantees.

The Ninth Circuit Court's Memorandum arbitrarily affirms the federal district courts decision to dismiss Whitcombe's federal case without explanation why in regard to pertinent disregarded facts. Federal pro-se. Plaintiff/ Whitcombe's case is a Federal Rules of Civil Procedure, CR60 (b) Motions Civil Rights Case.

Whitcombe's Case was first struck by the district court on district court allegation of a mere local court rule technicality, District Court's February 21, 2006 Order, Ex. A-1. which action is against U.S Supreme Court Case law as cited in Whitcombe's Writ of Certiorari, p. 14.

Then when Whitcombe's filed their Amended case after

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[1] Exhibits "A" are found in Whitcombe's Writ of Certiorari Appendix.

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they received a response from the court on what the court rule technicality was, ((District Court's March 20, Order, Ex. A-2, (pertinent part is quoted in Writ of Certiorari, P. 10)), which court alleged technicality was not disclosed in the local court rule and Whitcombe's, as soon as they could, filed their Corrected Amended Case. District Court's April 12, 2006 Order, Ex. A-13. "After" Whitcombe's filed their corrected amended case the district court dismissed Whitcombe's case again. This time for not being timely filed (district court's April 12, 2006 Order, Ex. A-3) when the district court's own docket sheet, dated stamp on Whitcombe's corrected case and UPS hand delivery receipt shows the court had already received and filed it. Most importantly, Whitcombe's could find no local court rules or Federal Rules of Civil Procedure Rules, restricting the time for litigants to refile their corrected and amended case.

Then the district court decided to dismiss Whitcombe's case because the district courts said district courts do not have jurisdiction to adjudicate Whitcombe's CR60 (b) Motions Case. Ex. A-3.

When Whitcombe's filed a CR60 Motion to vacate the courts previous judgment for obviously not being legally effective, in vacating the state void judgment. the court threatened Whitcombe's with sanctions if they continue to persist in trying to get the district court to comply with CR60. District Court's Dec. 4, 2006 Order, Ex. A-8.

The Ninth Circuit Court may have mislead this Court into thinking, as the Ninth Circuit Court's Memorandum implies, that Whitcombe's as sour grapes losers were ignorantly trying to get the district court to

provide a typical Court of Appeals appellate forum to review and reject three state court cases. Whitcombe's agree the Rooker - Feldman doctrine applies in denying district court jurisdiction in this category of a federal case.

Whitcombe's Writ of Certiorari, responds to the Ninth Circuits Memorandum by citing the First and Fifth Amendment and presenting two federal questions.

Federal Question (1),

"Can federal district courts and judges dismiss federal Po-Se Plaintiff's CR60 Motion Complaint involving civil rights issues of a state void judgment allegedly violating citizens rights on a technicality then dismiss Pro-Se's corrected CR 60 Motion after the court had already received it for not being timely filed when the Court gave no time restrictions, and there are no local court rules of Federal Court Rules of Civil procedure requiring time limitations?"

Federal Question (2)

"Does the Rooker- Feldman Doctrine as interpreted by the Courts of Appeals, recognizing federal district courts do not have jurisdiction to vacate void judgments allegedly violating citizens rights the state highest court refused to address, remedy, and finalize, because only the United States Supreme Court has jurisdiction to review state court judgments of the highest state court, or does Federal Court Rules of Civil Procedure provide the basis of jurisdiction in district courts through an independent and original action, CR60 Relief From Judgment or Order, (b) (4),(5) and (6)?"

Whitcombe's case is a Federal Rules of Civil Procedure, CR60 Relief From Judgment or Order (b) (4), (5), and (6) federal independent and original action Motions Case. Ex. A-13.

As Whitcombe's CR60 (b) Motion Case Ex. A-13, states, Whitcombe's are seeking federal relief from five state of Washington judgments, void on their faces in four State of Washington court cases attached to Whitcombe's federal case in district court; the 1996 Henak v Whitcombe Judgment, pursuant to CR60 (b) (4), two state adopted CR60 (b) Relief from Judgment or Order (b) Motion case Judgments, 1999, 2003, one Whitcombe v State Judgment, 2002, and one Whitcombe v Kitz judgments 2003, based on the Henak v Whitcombe Judgment, pursuant to CR60 (b) (5).

This totals five separate, but related judges judgments void on their faces for a multiple of alleged reasons, as stated in Whitcombe's federal case at bar. None of the many state courts or federal district court and Court of Appeals for the Ninth Circuit Court, confronted with this evidence have contested Whitcombe's allegations. They all just chose not address Whitcombe's claims.

Whitcombe's are also seeking relief from the operation of the void judgments not covered by CR60 (b) (4) and (5), pursuant to CR60 (b) (6). Each of the judgments are allegedly violating Citizens Rights secured by the State of Washington and US Constitution and laws. The State of Washington has refused to address the problem in denying Whitcombe's State Petition for Discretionary Review. March 1, 2005. All of these records are found in Whitcombe's federal case on file in the federal district court of Arizona.

Whitcombe's federal case, as it reads, and by its nature, is categorically NOT a case seeking federal relief by trying to get the district court to provide a appellate review forum to review the judgments void on their faces to see if they are indeed void on their faces. Instead, and again, as previously noted, Whitcombe's Case is a Federal Court Rules of Civil Procedure, CR60 Relief From Judgment or Order (b) (4), (5) and (6) Motions Case.

Federal Rules of Civil Procedure, "...govern the procedure in all civil actions and proceedings in the United States district courts,...", Federal Court Rules of Civil Procedure, Rule 1 - Scope and Purpose.

CR60 Relief From Judgment or Order, (b) (4) the judgment is void" does not require district courts to act like a Court of Appeals and follow typical appellate procedure rules of civil procedure. A void judgment is a legal nullity having no legal effect what so ever. CR60 (b) (4) requires the district court to treat void judgments for what they are, a legal nullity, not for what they are not. This is why void judgments are not worthy of an appeal in a Court of Appeals forum, which district courts, not being a Court of Appeals Court, do not have jurisdiction to entertain.

It is obvious that if the Scope and Purpose of Federal Rules of Civil Procedure is to "...govern the procedure in all civil actions and proceedings in the United States district courts,..." that the Supreme Court and congress would provide jurisdiction for the federal district courts to implement and follow Federal Rules of Civil Procedure, other wise Federal Court Rules of Civil

Procedure could not be used.

Accordingly Whitcombe's brought their " Court Rule of Civil Procedure, CR60 Relief from Judgment or Order" Motions Case, pursuant to district court jurisdiction, 28 USC 1332, 28 USC 1331,and 28 USC 1343. This granted federal district courts jurisdiction, requiring the district court to conduct a CR60 (b) (4), (5) and (6) forum to adjudicate justice.

In light of all this information and despite this information presented to the Ninth Circuit, The United States Court of Appeals for the Ninth Circuit in its July 16, 2007 Memorandum states,

> "United States district courts lack authority to review final judgments of the state courts acting judicially.; such review may only be had in the United States Supreme Court. See ***Dist. Of Columbia Court of Appeals v. Feldman*** 460 U.S. 462, 482 (1983). The Rooker - Feldman thus bars cases such as the Whitcombe's….. " Court of Appeals for the Ninth Circuit July 16, 2007 Memorandum, Ex. A-11-2.

The Ninth Circuit Court's Memorandum still does not explain why the district court doe not have jurisdiction in the Whitcombe Case at bar. First of all, state courts rendering final judgments that are void on their faces, whether intentional or not, are NOT acting judicially.

Secondly, if district courts lack subject matter jurisdiction to implement and follow Federal Court Rules of Civil Procedure, then all Orders and Judgments rendered in the United States district courts following federal district court Federal Rules and Civil Procedure

would have to be vacated for lack of jurisdiction.

It is just not rationally possible that the U.S Supreme court or Congress forgot to provide jurisdictional statutes for district courts to follow in implementing and following CR60 or for any other Federal Rules of Civil Procedure for that matter. The real issue here then is presented in Whitcombe's two federal questions in their Writ of Certiorari questioning if the district court has jurisdiction for doing what it did in dismissing federal pro-se, Plaintiff/Whitcombe's federal Rules of Civil Procedure, CR 60 Relief From Judgment or Order (b) case.

Whitcombe's Writ of Certiorari federal question (2) federally questions which federal court has jurisdiction to provide a forum for a Citizen seeking federal releif from a void judgment ? This is a very important federal question raised by the Ninth Circuit Court of Appeals affirming the district courts dismissing of Whitcombe's CR60 (b) Motion Case for alleged lack of jurisdiction when Federal Rules of Civil Procedure are for federal district courts.

Additionally the United States Court of Appeals for the Ninth Circuit in its own independent rulings related to the Whitcombe case have denied Whitcombe's complaint the federal district court judges are not performing their duty required of them by CR60 (b) (4) (5) and (6), with the Court of Appeals for the Ninth Circuit affirming the Chief Judge's dismissal of Whitcombe's Judicial Complaint by "IN RE COMPLAINT OF JUDICIAL CONDUCT" No. 06-89062 Order January 18, 2007, Ex. A- 9 and Whitcombe's complaint that the federal district court is not

performing its duty required of CR60 (b) (4), (5) and (6) which Writ of Mandamus was denied by October 19, 2006 Order, Ex. A-7.

It is now a truism that the federal courts are under a "virtually unflagging obligation" ... to exercise the jurisdiction given them." England v. Louisana State Bd. of Medical Examiners, 375 U.S. 411, 415 (1964); accord Deakins v. Monoghan, 484 U.S. 193, 203 (1998); Colorado River Water Conser. Dist. v. United States, 424 U.S. 800, 817, rehearing denied, 426 U.S. 912 (1976); McClellan v. Carland, 217 U.S. 268, 281 (1910). Further more, the Ninth Circuits own case law supports this truism one step further to say if courts do not honor this truism, they will violate Citizens constitutional due process rights.

"Denial of any forum in which to bring [a] claim would almost surely violate [litigants'] ... constitutional due process rights." (Board of Trustees of Local 25 v. Madison Hotel, Inc., 97 F. 3d 1479, 1489 & n. 17 (D.C. Cir. 1996) (Rule 60(b) motion at issue) (citing Erwin Chemerinski, *Federal Jurisdiction*, 172, 196-200 (2d ed. 1994), *inter alia*, for the proposition "that due process would be violated if federal jurisdiction were restricted in such a manner as to prevent any court...from hearing a claim.")

Perry v. United States, 204 U.S. 330, 358

> "I do not understand the government to contend that it is any less bound by the obligation than a private individual would be..." "It is not the function of our government to keep the citizen from falling into error; it is the function of the

citizen to keep the government from falling into error."

It is the paramount duty of the Supreme Court of the United States to establish law and order in the federal courts by interpreting the Constitution and determining the constitutionality of congressional and state legislated laws so as in the Whitcombe's case, state and federal courts can administer Constitutional Justice by "Rule of Law. Rule of Law in its most basic form is intended to be a safegard against arbitrary governance.

The Constitution, is the Supreme Law of the Land, a King that can do no wrong. No one, and/or branch(s) government, are above the Constitution and laws in the United States of America. If the rule of law in the United States of America is a law of rules, then those rules constrain this Court as they do every other branch of government that makes up a government bound by the United States Constitution.

"To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort": Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978) (quoted in BMW at 517 U.S. at 573 n.19) see Whitcombe's CR60 (b) Motion Case, Ex. A-13-5.

To punish a person because he has petitioned to the government for redress of grievances in state and federal courts is a direct violation of Citizens US Constitutional First Amendment Rights which grants US Citizens the inviolate right to petition the government for redress of grievances and have government address the matter in a meaningful manner without fear of retaliation for the same. And when state and federal

government violates Citizens U.S Citizens inviolate First Amendment Rights government most likely violates Citizens 14th and 5th Amendment Due Process and Equal Protection of the Law Rights.

If federal district courts are not required to perform their duty by rule of law required of them pursuant to CR60 (b) (4) (5) and (6), then judges void judgments, violating Citizens Rights will continue unabated, whether intentionally or not, that as in the Whitcombe case, solely benefit government self interests at the wholesale cost of Citizen's Constitution and Citizen's Rights secured by the Constitution and laws.

Pro-Se Petitioner Whitcombe's ask that this Honorable Supreme Court to please review the sufficiency of our Pro-Se plaintiff's complaint by liberal construction of our pleadings Haines v. Kerner, 404 U.S. 519, 521 (1972) so that justice can be adequately served.

CONCLUSION

For the foregoing reason, this petition for rehearing should be granted, the opinion on February 19, 2008 vacated.

Dated this 17 day in March, 2008

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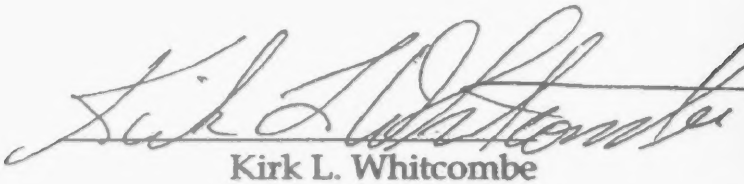
CERTIFICATE

This petition for rehearing is restricted to the grounds specified in Rule 33, paragraph 2 and is presented in good faith and not for purposes of delay.



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